

Court of Appeals, State of Michigan

ORDER

People of MI v Charles Michael Perry

Docket No. 343092

LC No. 17-262043-FC

Cynthia Diane Stephens
Presiding Judge

Michael F. Gadola

Anica Letica
Judges

On order of the Court, the motion for reconsideration is DENIED, for the following reasons:

We acknowledge that the defendant offered *People v Lewis*, 176 Mich App 690; 440 NW2d 12 (1989), to this panel for consideration. Therefore, the Court's determination that the defendant had abandoned his argument was erroneous. However, we note that *Lewis* was decided under MCR 6.101(F)(6)(b), which has been replaced by MCR 6.310. "The Supreme Court in promulgating MCR 6.310(B) of the Rules of Criminal Procedure (effective October 1, 1989), discarded the "great liberality" standard in favor of a more restrictive standard that considers the interests of justice and potential prejudice to the prosecution." *People v Gomer*, 206 Mich App 55, 57; 520 NW2d 360 (1994). Thus, we did not err in our previous analysis.

As for defendant's claim of coercion, the trial court did not abuse its discretion when it denied defendant's motion to withdraw his plea due to the alleged coercive effect of the time he had to contemplate the prosecution's plea offer and his attorney's ineffectiveness. There is nothing of record showing that the over two hours of time defendant was granted to consider the plea was inadequate to the point that it overbore defendant's will or induced emotions so intense that defendant was unable to rationally weigh his options. Neither did defendant's perception of his counsel's unpreparedness relieve him of his plea where: 1) "[d]ecisions regarding what evidence to present and whether to call . . . witnesses are presumed to be matters of trial strategy[.]" *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999) (citation omitted); 2) the court properly rejected defendant's self-defense claim in light of the videotape evidence; and 3) the result of any polygraph would have been inadmissible at trial, *People v Barbara*, 400 Mich 352, 411; 255 NW2d 171 (1977).

Defendant is further bound by his under-oath statements affirming that he was satisfied with his attorney's advice, it was his own choice to plead, denying that anyone had threatened him in order to induce his plea, and affirming that he was "giving up any claim that [his] plea was the result of promises or threats that were not disclosed to th[e] court and that it was not [his] choice to plead." *People v White*, 307 Mich App 425, 430; 862 NW2d 1 (2014), citing *People v Serr*, 73 Mich App 19, 28; 250 NW2d 535 (1976) ("This Court held that when a plea is entered in accordance with the applicable court rules, a trial court is barred from considering testimony or affidavits inconsistent with statements made during the plea hearing.").

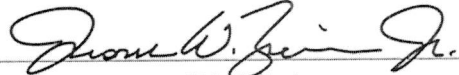
The Court's opinion issued May 9, 2019 is again AFFIRMED.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

NOV 18 2019

Date


Chief Clerk